

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

142819

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
OUTBOARD MARINE CORPORATION, )  
 )  
Defendant. )

NO.

103571

JUDGE NORGLE  
MAGISTRATE BALUG

CONSENT DECREE

RECEIVED

OCT 7 1938

JUDGE CHARLES R. NORGLE, Sr.  
UNITED STATES DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

|                                   |   |              |
|-----------------------------------|---|--------------|
| UNITED STATES OF AMERICA and      | ) |              |
|                                   | ) |              |
| PEOPLE OF THE STATE OF ILLINOIS,  | ) |              |
|                                   | ) | Civil Action |
| Plaintiffs,                       | ) |              |
|                                   | ) | Nos. _____   |
| v.                                | ) | and _____    |
|                                   | ) |              |
| OUTBOARD MARINE CORPORATION, INC. | ) |              |
|                                   | ) |              |
| Defendant.                        | ) |              |
| _____                             | ) |              |

CONSENT DECREE

WHEREAS, the United States of America ("United States" or "U.S."), acting on behalf of the United States Environmental Protection Agency ("U.S. EPA"), filed a complaint in Civil Action No. 78-C-1004 on March 17, 1978, asserting claims against the Outboard Marine Corporation ("OMC") under the Refuse Act, 33 U.S.C. § 407; the Clean Water Act, 33 U.S.C. § 1251 et seq.; and the federal common law of nuisance regarding alleged discharges of polychlorinated biphenyls ("PCBs") into the environment and ensuing harm to the sovereign rights and interests of the United States in the interstate navigable waters and biota of the North Ditch, Waukegan Harbor, and Lake Michigan;

WHEREAS, the United States amended its Complaint in Civil Action No. 78-C-1004 on January 20, 1982, and asserted a claim for relief against OMC under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606;

WHEREAS, the State of Illinois was granted leave to intervene in Civil Action No. 78-C-1004 and asserted claims against OMC under the Clean Water Act, the common law of nuisance, the Illinois Public Nuisance Act (Ill. Rev. Stat. Ch. 100-1/2, § 221 et seq.), the Illinois Environmental Protection Act (Ill. Rev. Stat. Ch. 111-1/2, par. 1001 et seq.), and the common law of trespass, alleging that OMC had discharged PCBs into Waukegan Harbor, the North Ditch, and Lake Michigan and thereby caused damage to waters, sediments, and biota owned by the State of Illinois in trust for the benefit of the people and wildlife in the State;

WHEREAS, U.S. EPA, pursuant to Section 105 of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. § 9605, placed the Waukegan Harbor site in Lake County, Illinois (the "Site", as more specifically defined in Section III.C of this Consent Decree) on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658;

WHEREAS, U.S. EPA completed a source control Feasibility Study ("FS") report on July 15, 1983, which report contains a recommended alternative for remedial action at the Site;

WHEREAS, on or about July 15, 1983, U.S. EPA published notice of the completion of the FS Report and of the recommended alternative for remedial action and provided opportunity for

public comment to be submitted in writing to U.S. EPA by September 1, 1983 or orally at a public meeting held in the City of Waukegan, Illinois, on August 3, 1983, and also provided a second opportunity for public comment to be submitted in writing by April 4, 1984 or orally at a public meeting held in the City of Waukegan, Illinois on March 14, 1984;

WHEREAS, U.S. EPA has kept a transcript of the public meetings and has made this transcript available to the public;

WHEREAS, the Court dismissed without prejudice Civil Action No. 78-C-1004 on March 6, 1985, conditioned on the United States and the State of Illinois each executing a covenant not to sue OMC for specified matters, but reserving the right to bring an action for certain other matters;

WHEREAS, the United States and the State of Illinois both executed covenants not to sue OMC, in conformity with the Court's March 6, 1985 order, and the terms of such covenants were approved by the Court;

WHEREAS, in accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), the State of Illinois has been notified and has participated in negotiations regarding the scope of the remedial design and remedial action for the Site;

WHEREAS, the Illinois Environmental Protection Agency ("IEPA") is participating in the execution and implementation of this Consent Decree pursuant to paragraph 1004 of Chapter 111-1/2 of the Illinois Revised Statutes;

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WHEREAS, the terms of this Consent Decree will be made available to the public pursuant to Section 117 of CERCLA and a public meeting will be held, and the terms of this decree shall constitute the final Remedial Action Plan;

WHEREAS, pursuant to Section 112(j) of CERCLA, 42 U.S.C. § 9622(j), U.S. EPA notified the Federal and State natural resource trustee(s) of negotiations on the subject of addressing the release or threatened release of hazardous substances at the Site, and U.S. EPA has encouraged the participation of the Federal and State natural resource trustee(s) in such negotiations;

WHEREAS, the State of Illinois contends that OMC is responsible for damages to sediments and submerged lands that are within the Waukegan Harbor Site resulting from the discharge of PCBs by OMC;

WHEREAS, the United States and the State of Illinois contend that OMC is legally obligated to pay damages and response costs incurred in connection with the release of PCBs at the Waukegan Harbor Site;

WHEREAS, the United States and the State of Illinois ("the Plaintiffs") filed complaints against OMC herein, seeking payment of damages and response costs under CERCLA in connection with the release of PCBs at the Waukegan Harbor Site;

WHEREAS, OMC denies any and all legal or equitable liability under any federal or state statute, regulation, ordinance,

or common law for or relating to conditions at the Waukegan Harbor Site, including but not limited to liability for response costs or damages for injuries to natural resources resulting from storage, treatment, handling, or disposal activities or actual or threatened releases of PCBs or any other hazardous substance at the Waukegan Harbor Site, but agrees to the terms and conditions of this Consent Decree to settle the claims made against it by Plaintiffs;

WHEREAS, the Plaintiffs and OMC, in a spirit of compromise, have put aside their legal and equitable claims and defenses and have worked cooperatively to resolve their disputes in a fair and equitable fashion, without litigation;

WHEREAS, Plaintiffs and OMC agree that settlement of this matter and entry of this Consent Decree is made in good faith in an effort to avoid further litigation, without any admission as to facts or liability for any purpose, to settle and resolve disputed claims;

WHEREAS, pursuant to Section 121(d)(1), the United States, the State, and OMC ("the Parties") believe that the remedial and sediment and submerged lands resource restoration actions to be undertaken pursuant to this Consent Decree will attain a degree of cleanup of hazardous substances, pollutants and contaminants released into the environment and of control of further releases which at a minimum assures protection of human health and the environment at the Site;

WHEREAS, the Parties believe the remedial and sediment and submerged lands resource restoration actions to be undertaken pursuant to this Consent Decree will provide a level or standard of control for such hazardous substances, pollutants, or contaminants which at least attains legally applicable or relevant and appropriate standards, requirements, criteria, or limitations under Federal environmental law or State environmental or facility siting law in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2); are in accordance with Section 121 of CERCLA, 42 U.S.C. § 9621; and are consistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300;

WHEREAS, the Parties believe that the remedial and sediment and submerged lands resource restoration actions to be undertaken pursuant to this Consent Decree are at least as protective of human health and the environment as the alternatives presented in the Record of Decision for the site approved by EPA on May 15, 1984;

WHEREAS, the Federal and State natural resource trustees have reviewed this Decree and determined that: (i) the Decree requires the performance of appropriate actions that will provide protection of natural resources under their trusteeship, (ii) upon proper completion of the activities listed in Section V.D.1. of this Decree (excluding operation, maintenance and monitoring activities) and in the absence of failure of the containment cells, the Facility will not be considered a source

of any future injuries to resources under Federal and State trusteeship with respect to the releases described in Plaintiff's complaint, and (iii) any injuries to natural resources that might result from releases caused by proper implementation of this Decree will not be attributed to OMC;

WHEREAS, OMC agrees to pay monies into a trust and ensure implementation of all requirements under this Consent Decree, and U.S. EPA has determined that the work required under the Consent Decree will be performed properly;

WHEREAS, the Parties recognize the public interest in expediting the cleanup of the Site, and the Parties desire to further this interest through entry of this Consent Decree without further litigation;

WHEREAS, in order to facilitate this settlement, the Parties have agreed that certain matters not covered by this Decree, as identified in Section XVI C.2. below, should be preserved for separate resolution, if necessary, subsequent to entry of this Consent Decree and;

WHEREAS, the Court finds that the provisions of this Consent Decree are fair, reasonable and in the public interest;

NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed:

I.

JURISDICTION

This Court has jurisdiction over the subject matter herein, and over the parties consenting hereto. The parties shall not

challenge this Court's jurisdiction to enter and enforce this Consent Decree.

## II.

### PARTIES BOUND

This Consent Decree applies to and is binding upon the undersigned parties, the Trustee (as defined in Section III hereof), and their agents, successors and assigns. The undersigned representative of each party to this Consent Decree certifies that he or she is fully authorized by the party or parties whom she or he represents to enter into the terms and conditions of the Consent Decree and to execute and legally bind that party to it. OMC shall provide a copy of this Consent Decree to the Trustee and each contractor hired to perform the Work required by this Consent Decree and shall provide notice of this Consent Decree to any subcontractor retained to perform any part of the Work required by this Consent Decree.

## III.

### DEFINITIONS

Unless otherwise defined herein, terms used in this Consent Decree that are defined in Section 101 of CERCLA, 42 U.S.C. §9601, shall have the meanings ascribed to them therein. Whenever the following terms are used in this Consent Decree and the Exhibits and Appendices attached hereto, the following definitions specified in this Paragraph shall apply:

A. "Architect" or "Engineer" means the company or companies retained to prepare the construction plans and specifications necessary to accomplish the work described in the RAP.

B. "Contractor" means the company or companies retained to undertake and complete the Work required by this Consent Decree. Each Contractor and subcontractor shall be qualified to do those portions of the Work for which it is retained.

C. "Future Liability" refers to liability arising after U.S. EPA's Certification of Completion is issued pursuant to Section XXIV.

D. "Hazardous Substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

E. "IEPA" means the Illinois Environmental Protection Agency.

F. "National Contingency Plan" or "NCP" shall be used as that term is used in Section 105 of CERCLA, 42 U.S.C. § 9605.

G. "OMC" means Outboard Marine Corporation, Inc., a corporation organized under the laws of the State of Delaware and doing business in Waukegan, Illinois.

H. "Parties" means the United States of America, the State of Illinois and OMC, and, upon execution of the Trust Agreement, the Trustee.

I. "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees (including monochlorinated biphenyls, dichlorinated biphenyls and polychlorinated biphenyls.)

J. "Performance Standards" means the following requirements: (1) design and construction of the containment cells in the areas designated in the Figures 3, 4 and 6 of Appendix III in accordance with the design criteria set forth in Table 1 of Appendix III; (2) excavation and dredging of soils and sediments from designated Treatment Areas specified on Figures 8 and 13 of Appendix III, and treatment of such soils and sediments to extract at least 97% of the PCBs by mass present in said material in the manner prescribed in Section 3.2 of Appendix IV; (3) destruction of extracted PCBs in compliance with applicable laws and regulations; (4) excavation of soils and sediments from the areas and to the elevations of OMC property designated in Figure 14 of Appendix III and placement of such material in the West Containment Cell; (5) dredging of soil and sediments from the areas and to the elevations of Waukegan Harbor designated in Figure 9 of Appendix III and consolidation of soil and sediments in the Slip No. 3 containment cell; and (6) maintenance of an inward hydraulic gradient accross the length and width of each containment cell for the period of time this gradient must be maintained pursuant to Section V.D.9 of this Decree.

K. "Plaintiffs" means the United States of America and the State of Illinois.

L. "Remedial Action Plan" or "RAP" means the plans for the implementation of the remedial design, remedial action, resource restoration, and operation and maintenance and

monitoring to be undertaken at the Site as set forth in Appendices III through VII and any modifications thereto made in accordance with the provisions of this Decree and all plans approved hereunder.

M. "Response Costs" means any costs incurred by Plaintiffs pursuant to 42 U.S.C. § 9601 et seq.

N. "State" means the State of Illinois and its agencies and agents, including but not limited to the Illinois Attorney General and the Illinois Environmental Protection Agency.

O. "Treatment Areas" refers to areas and elevations of the Site from which sediments and soils will be excavated for treatment as specifically described in Sections 4.5 and 4.6 of Appendix III as Areas C through I, on Figure 13 and Areas M, N and O on Figure 8 of Appendix III.

P. "Treatment Contractor" means the company hired to perform treatment of sediments and soils as described in Sections 4.5 and 4.6 of Appendix III, as Areas C through I on Figure 13, and Areas M, N and O in Figure 8, of Appendix III. The Contractor may also be the Treatment Contractor.

Q. "Trust Agreement" means the agreement for the establishment, funding and operation of the Waukegan Harbor Site Trust annexed as Appendix II hereto.

R. "Trustee" mean each person or entity, including successors, appointed pursuant to the Trust Agreement to manage the Waukegan Harbor Site Trust; hire, supervise and pay the Contractor(s); and implement the Work to be performed under

this Decree. OMC and the Trustee shall be deemed to be related by contract for purposes of 42 U.S.C. § 9607(b)(3).

R. "United States" means the United States of America.

S. "U.S. EPA" means the United States Environmental Protection Agency.

T. "U.S. DOJ" means the United States Department of Justice.

U. "Waukegan Harbor Site" or the "Site" means the area depicted in Appendix I, including, but not limited to, Slip No. 3 of Waukegan Harbor, the Upper Harbor of Waukegan Harbor, and the following areas located on OMC facility property: the North Ditch, Crescent Ditch and Oval Lagoon, and the Parking Lot.

V. "Waukegan Harbor Site Trust" or "Trust" means the Trust established pursuant to Section IV.C. of this Decree.

W. "Work" means the design, remedial, sediment and submerged land resource restoration, and operation and maintenance activities to be undertaken in accordance with this Consent Decree, the RAP, and plans or schedules required to be submitted pursuant thereto. All activities set forth in the RAP are included in this definition.

#### IV.

##### GENERAL PROVISIONS

###### A. Objective of This Consent Decree

The objective of this Consent Decree is to redress alleged injuries to certain property and natural resources of the State, including sediments and submerged lands within the Site, and to address certain alleged injuries, as covered in this Decree, to natural resources held in trust by the United States and the State, caused by the release of PCBs at the Waukegan Harbor Site, and to prevent or minimize the release of PCBs consistent with the NCP to protect public health and the environment. These injuries will be addressed and redressed through implementation by the Trustee of the Work provided for in this Decree, and by the payment of damages by OMC into the Trust to fund the implementation of that Work.

###### B. Commitment of OMC

1. OMC shall establish the Waukegan Harbor Site Trust in accordance with the requirements of Paragraph C below, and OMC shall finance performance of the Work as defined in Section III.X., including all activities undertaken by the Trustee.

2. Notwithstanding establishment of the Waukegan Harbor Site Trust, OMC shall be responsible for ensuring the proper, complete, and timely performance of all requirements of this Consent Decree, including all Work undertaken by the Trust. In the event the Trust fails to implement the Work in

accordance with all schedules and requirements of this Consent Decree and the RAP, OMC shall be liable for such failure in accordance with Paragraph D of this Section.

3. The Work as defined in Section III.X. shall be completed in accordance with all requirements of this Consent Decree, including Performance Standards and specifications, and within the time periods set forth in Section V and in the RAP.

C. Waukegan Harbor Site Trust

1. OMC shall execute and file with the Court a signed trust agreement (the "Trust Agreement") establishing the Waukegan Harbor Site Trust, in the form attached hereto as Appendix II, within ten (10) working days after entry of this Consent Decree. The Waukegan Harbor Site Trust shall be construed to confer upon the Trustee all powers and authority necessary to perform the Work required under this Consent Decree. The Trust Agreement shall instruct the Trustee to (a) take all action necessary to perform the Work required under this Consent Decree, including, but not limited to, hiring the Architect, Engineer and Contractor(s) to perform the Work and ensuring that the Work is properly performed; (b) reimburse the United States and the State of Illinois for overseeing the terms of this Consent Decree as provided in Section XIV hereof; (c) pay other expenses necessary to fulfill the requirements of this Consent Decree; (d) submit to the Parties, by June 1 of each year after entry of this decree, financial reports describing all monies received and expended by the Waukegan

Harbor Site Trust and a projection of the income and expenditures of the Trust for the subsequent one-year period; (e) notify OMC, U.S. EPA and IEPA promptly in the event funds in the trust are or will be insufficient to ensure uninterrupted completion of the Work; and (f) submit such other reports as are requested by OMC. The Trustee shall use the money in the Waukegan Harbor Site Trust for these purposes. Upon execution of the Trust Agreement, the Trustee shall be deemed a party to this Consent Decree.

2. Payments to Waukegan Harbor Site Trust

OMC shall make payments into the Waukegan Harbor Site Trust in accordance with the payment schedule attached hereto as Exhibit A to the Trust (Appendix II). In the event the financial reports of the Trustee show that the projected expenditures of the Waukegan Harbor Site Trust exceed projected Trust funds, OMC shall pay additional amounts to the Trust sufficient to fund the difference within a time sufficient to assure the uninterrupted and timely completion of the Work. Further, in the event the Trustee gives notice that funds in the Waukegan Harbor Site Trust are insufficient at any time to assure the uninterrupted progress and timely completion of the Work, OMC shall promptly pay such additional amount to the Trust as necessary to eliminate the insufficiency. OMC shall give prompt notice to U.S. EPA and IEPA of such payments. The Trustee, or the United States or the State, shall have the right to move the Court to compel payment of any funds required

to be paid to the Trust. Payments by OMC to the Trust do not constitute fines, penalties or monetary sanctions of any kind.

3. Purpose of Trust

The purpose of the Trust is to fund and implement the Work, including remedial, sediment and submerged land resource restoration, design, oversight, operation, monitoring, and maintenance activities undertaken at the Site. OMC's payments to the Trust constitute payments of damages and response costs to redress injuries to certain property and natural resources of the State, including sediments and submerged lands within the Site, and to address certain alleged injuries, as covered by this Consent Decree, to natural resources held in Trust by the United States and the State. OMC's payments to the Trust shall not operate to reduce any liability of OMC for matters covered by Section XVI C-E, below. Any penalties that may be assessed shall not be paid by the Trust.

D. Obligations of OMC

1. The establishment of the Waukegan Harbor Site Trust shall in no way limit the obligations of OMC under this Consent Decree. In the event the Trustee, or any Architect, Engineer or Contractor or other person hired by the Trustee, fails to perform the Work or any aspect of the Work in accordance with the terms of this Consent Decree and the RAP, U.S. EPA and IEPA, subject to Section XII.A. hereof, may institute an action or proceeding: (1) seeking injunctive relief or an order from this Court to compel OMC to ensure the performance

of any obligation under this Consent Decree, including the Work or any aspect of the Work; (2) to compel the Trustee to comply with the obligations of the Trust Agreement; (3) for stipulated penalties pursuant to Section XV hereof; (4) for any statutory penalties available under applicable law and consistent with this Decree; and (5) for other sanctions or relief available under law, including, without limitation, a proceeding for contempt of this Consent Decree.

2. Without limitation on the rights set forth in Paragraph 1, above, and in addition to all other remedies available under the Decree, U.S. EPA may elect to do one or more of the following in the event the Trustee fails to perform any material aspect of the Work in accordance with the terms of this Consent Decree and the RAP:

a. Following twenty-one (21) days notice to OMC and the Trustee, replace the Trustee with a substitute Trustee selected by U.S. EPA;

b. Subject to Section XII.A. hereof, seek injunctive relief or an order from this Court to terminate the Trust and compel OMC to perform any obligation assigned to the Trustee under this Decree.

3. In any action or proceeding listed in Paragraph 1 or 2 above, it shall not be a defense that an action required under this Consent Decree was taken or omitted to be taken by the Trustee, or by any Architect, Engineer, Contractor or other person hired by the Trustee, rather than by OMC. In any such

action or proceeding against OMC, OMC shall not assert that the Trustee is a necessary party or otherwise challenge the jurisdiction of the Court to compel OMC to undertake the tasks assigned to the Trustee under this Decree.

E. Permits and Approvals

1. All activities undertaken pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable local, state and federal laws, regulations and permits. The United States and the State have determined that the obligations and procedures authorized under this Consent Decree are consistent with the authority of the United States and the State under applicable law to establish appropriate remedial measures for the Site.

2. The United States and the State have determined that no federal, state, or local permits are required for work conducted entirely on-site as described in this Decree and the RAP. OMC shall ensure that the Trustee obtains all permits or approvals necessary for off-site work under federal, state or local laws and shall ensure that timely applications and requests for any such permits and approvals are submitted.

3. All contracts or subcontracts entered into for Work required under this Consent Decree shall include provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and regulations. This Consent Decree is

not, nor shall it act as, nor is it intended by the Parties to be, a permit issued pursuant to any federal or state statute or regulation.

F. Conveyance of Property Within Site Boundaries

1. Within thirty days of approval by the Court of this Consent Decree, OMC as owner of certain property within the boundaries of the Site shall record a copy of this Consent Decree with the Recorder's Office, Lake County, State of Illinois against such property.

2. Property owned by OMC within the boundaries of the Site may be freely alienated provided that at least sixty days prior to the date of such alienation, OMC notifies Plaintiffs of such proposed alienation, the name of the grantee, and a description of any obligation of OMC hereunder to be performed by such grantee. In the event of such alienation, each of OMC's obligations pursuant to this Consent Decree shall continue to be met by OMC or, subject to U.S. EPA's approval (such approval not to be unreasonably withheld), by OMC and the grantee. Even if a grantee assumes the performance of obligations of OMC pursuant to this paragraph, OMC shall remain solely responsible for ensuring the proper performance of all requirements of this Decree.

3. Any deed, title or other instrument of conveyance regarding property owned by OMC within the boundaries of the Site shall contain a notice that such property is the subject of this Consent Decree, setting forth the style of the case, case number, and Court having jurisdiction herein.

G. Discharge Limitations

1. Except as otherwise provided herein for PCBs and Total Suspended Solids (TSS), the legally effective terms and conditions of OMC's NPDES Permit No. IL 0002267 and any subsequently issued permit shall apply. Following approval of the Best Management Practices Plan described in subparagraph 2, for outfalls presently regulated by OMC's NPDES Permit No. IL 0002267, the following effluent limitations for PCBs and TSS shall apply, in lieu of all presently effective permit conditions for TSS and PCBs, from commencement of construction of the new slip pursuant to Table 3 of the Work Plan for In Place Containment (Appendix III) until completion of the construction schedule set forth in Table 3 of the Work Plan for In Place Containment (Appendix III):

| <u>Effluent</u>                                 | <u>Concentration Limit</u>                   | <u>Monitoring Frequency</u>               |
|---|--|---|
| <u>Outfalls 001, 006 and 008</u><br>PCB's       | 5 ppb daily maximum                          | Weekly                                    |
| <u>Outfalls 007 and 014</u><br>PCB's            | 5 ppb daily maximum<br>1 ppb 30 day average  | Twice weekly                              |
| <u>Outfalls 015 and 016</u><br><br>PCB's<br>TSS | 5 ppb daily maximum<br>30 mg/l daily maximum | Each Precipitation<br>Event <sup>*/</sup> |

---

<sup>\*/</sup> A Precipitation Event shall mean a 0.3 inch rainfall in a 24 hour period as monitored on or near the Site.

2. (a) Within 30 days from entry of this Consent Decree, OMC shall submit to U.S. EPA and IEPA for approval a Best Management Practices ("BMP") Plan which shall specify action to be taken to address and minimize the impact of the Work on discharges from the outfalls described above. The plan shall include consideration of influent filtration, use of an alternate intake water source for water presently withdrawn from the Harbor and discharged through outfalls 007 and 014, and procedures to control solids which may accumulate as a result of the Work on roof areas which discharge to outfalls 007 and 014.

(b) In addition to the provisions for Outfalls 015 and 016 in subparagraph (c), if the results of two consecutive samples from any outfall equals or exceeds 1.0 ppb PCB's, OMC shall implement the best management practices set out in the approved Best Management Practices Plan for areas and activities discharging to said outfall. Approval of the Best Management Practices Plan shall be subject to the provisions of Section XII of this Decree.

(c) From the date of commencement of implementation of the approved Best Management Practices Plan until completion of the construction schedule set forth in Table 3 of the Work Plan for In Place Containment, during the months April through November, OMC shall employ practices and procedures to remove accumulated solids from roof areas that discharge rain water runoff to outfalls 015 and 016.

The frequency and method of such practices and procedures shall be as specified in the approved Best Management Practices Plan. Washwater from those surfaces shall be collected and sampled for PCBs. If PCB concentrations in said washwater equal or exceed 1 ppb, said washwater shall be treated in the manner prescribed for Category 3 water in Section 4.6.14.2 of the Work Plan to a level below 1 ppb.

(d) OMC will determine the feasibility and cost of rerouting of the discharge of Upper Harbor intake water from outfalls 007 and 014 to existing or new outfall(s) in the Upper Harbor. In the event the discharge of Upper Harbor intake water is rerouted from outfall 007 and 014 to the Upper Harbor so that those outfalls discharge only storm water and/or roofwater runoff: (i) the limits applicable to outfalls 015 and 016 in paragraph 1 will apply to outfall 007; (ii) the limits applicable to outfalls 015 and 016 and the conditions of subparagraph (2)(c) shall apply to outfall 014 and; (iii) the BMP Plan will be amended accordingly. The limits applicable to outfalls 001, 006 and 008 will apply to the discharge of Upper Harbor intake water which is rerouted to Upper Harbor.

3. In accordance with applicable regulations, IEPA shall propose for public comment a modified NPDES Permit containing effluent limitations and conditions for PCBs and TSS consisting of those set forth in subparagraphs 1 and 2 of this Paragraph G. As soon as practicable, but no later than

twenty-one (21) days after the lodging of the Decree, IEPA agrees to propose such permit for a thirty (30) day public comment period and to schedule a public hearing on the proposed permit as soon as practicable, but no later than thirty (30) days after the expiration of the public comment period. U.S. EPA agrees not to object to or oppose those conditions of a permit that reflect the effluent limitations in subparagraph 1 and any proposed conditions contained in a BMP Plan approved under this Decree, unless the public comments demonstrate that said limitations or conditions are inconsistent with the Clean Water Act. In issuing or modifying said permit, IEPA may require monitoring or effluent limitations for other contaminants. After appropriate consideration of public comment, IEPA shall promptly issue a modification of or reissue the final permit in accordance with applicable law and regulations. OMC agrees to dismiss its appeal of the NPDES Permit (No. 0002267) (issued September 14, 1987), presently pending before the Illinois Pollution Control Board (PCB 87-159), upon reissuance or modification of a final permit with the terms and conditions for TSS and PCBs specified in subparagraphs 1 and 2 of this Paragraph G.

4. OMC shall comply with the terms and conditions of the modified or reissued permit referred to in the first sentence of paragraph 3 when such terms and conditions become legally effective. Nothing in this Consent Decree shall prevent OMC from appealing any terms and conditions of the

modified or reissued permit pursuant to applicable regulations, except that OMC agrees not to challenge terms and conditions which incorporate the PCB and TSS limitations and conditions required under subparagraphs 1 and 2 hereof. OMC shall notify the other Parties to this Decree of the date said permit becomes legally effective with respect to PCBs and TSS.

5. The pendency or outcome of any proceeding concerning the issuance, reissuance or modification of the NPDES permit shall not affect or postpone the duties and obligations of any Party, as set forth in any other Section of this Decree. OMC shall notify the Parties of the date of commencement of implementation of the approval of the Best Management Practices plan required by this Paragraph G.

## V.

### PERFORMANCE OF THE WORK

A. All design work to be performed pursuant to this Consent Decree shall be under the direction and supervision of a qualified professional architect or engineer. Prior to the initiation of design work for the Site, the Trustee shall notify U.S. EPA and IEPA, in writing, of the name, title, and qualifications of any engineer or architect proposed to be used in carrying out the design work to be performed pursuant to this Consent Decree. Selection of any such architect or engineer shall be subject to approval by U.S. EPA and IEPA, provided that such approval shall not be unreasonably withheld.

B. All remedial action and sediment and submerged land resource restoration work to be performed pursuant to this Consent Decree shall be under the direction and supervision of a qualified professional engineer. Prior to the initiation of such work at the Site, the Trustee shall notify U.S. EPA and the IEPA, in writing, of the name, title, and qualifications of the proposed engineer, and the names of principal contractors and subcontractors proposed to be used in carrying out the Work to be performed pursuant to this Consent Decree. Selection of any such engineer or contractor or principal subcontractor shall be subject to approval by the U.S. EPA and IEPA, provided that such approval shall not be unreasonably withheld.

C. Appendices III through VII to this Consent Decree describe the tasks to be performed for the completion of the Work at the Site. Appendices III through VII are incorporated into and made an enforceable part of this Consent Decree.

D. OMC shall finance and ensure the performance of all Work, including remedial design, remedial action, sediment and submerged land resource restoration, and operation, maintenance and monitoring work at the Site, as described in this Consent Decree and in the RAP. All such Work shall be performed in accordance with all the provisions of this Consent Decree, the RAP, and all design specifications, work plans, or other plans or schedules attached to or approved pursuant to the RAP. In the event of any conflict between the Decree and the RAP, the Consent Decree shall control; however, notwithstanding any

provision of this Decree, the summary in paragraph D.1. below may not be used to expand or modify the Work set forth in the RAP.

1. The major components of the Work, which are detailed in the RAP, may be summarized as follows:

(a) Design, construction, and operation, maintenance and monitoring of three containment cells on the Site for the storage of soils and sediments, incorporating slurry walls, caps constructed of natural and synthetic materials, and an extraction well system designed to maintain an inward hydraulic gradient within each containment cell.

(b) Excavation or dredging of soils and sediments from designated Treatment Areas in Waukegan Harbor and on the Site, and separate on-site treatment of the aforesaid excavated material in a manner guaranteed to extract at least 97% of the PCBs by mass present in said materials, followed by destruction of the extracted PCBs in compliance with applicable laws and regulations, and placement of the treated soils and sediments in the West Containment Cell in the North Property area.

(c) Excavation of soils and sediments from designated areas of OMC property and consolidation of such soils and sediments in the West Containment Cell in the North Property area.

(d) Dredging of sediments from designated areas of Waukegan Harbor and consolidation of said sediments in the Slip No. 3 containment cell.

(e) Development of a new boating slip adjacent to Slip No. 3 for relocation of Slip No. 3 activities.

(f) Treatment before discharge of certain water generated during dredging, dewatering, and other operations required at the Site.

(g) An operation, maintenance and monitoring program to monitor and ensure the effectiveness of the Work, as described in Appendix VII.

2. Documents and reports (hereinafter referred to as "documents"), other than progress or financial reports, to be submitted pursuant to this Consent Decree or the RAP shall be subject to review and approval by U.S. EPA with the concurrence of IEPA.

3. The U.S. EPA shall notify the Trustee and OMC, in writing, of approval, disapproval, or required modifications of documents submitted pursuant to this Consent Decree or any part thereof. The Parties anticipate that U.S. EPA and IEPA will complete their review of documents within thirty (30) days; however, nothing herein shall be construed to limit the rights of U.S. EPA to approve or disapprove documents if review is not completed within such thirty (30) day period. In the event that a longer review period is required, the EPA Remedial Project Manager shall notify the Trustee and OMC of that fact within thirty (30) calendar days of receipt of the document. In the event of any disapproval, U.S. EPA shall specify, in writing, any deficiencies and required modifications to the document and explain the basis therefor.

4. Within thirty (30) calendar days of receipt of any written notification of document disapproval, or after such additional time as the parties may agree upon in writing, a revised document which incorporates the required modifications shall be submitted to U.S. EPA and IEPA, or a Motion for Dispute Resolution shall be made within the time and in the manner set forth in Section XII.

5. Promptly upon entry of this Consent Decree, the Trustee shall proceed to implement the Work hereunder in accordance with the schedule for implementation set forth in the RAP. Unless otherwise directed by U.S. EPA, the Trustee shall not commence field activities with respect to matters subject to approval by U.S. EPA (with concurrence by IEPA) until approval by U.S. EPA has been received. All Work hereunder shall be conducted in accordance with the National Contingency Plan and the requirements of this Consent Decree, including the Performance Standards, specifications and schedule contained in the RAP.

6. The Parties acknowledge and agree that neither this Decree nor Plaintiffs' approval of the RAP or any other documents submitted pursuant to this Consent Decree or the RAP constitutes a warranty or representation of any kind by Plaintiffs that the Work will achieve the Performance Standards set forth in the RAP. Plaintiffs' approval of documents submitted pursuant to this Consent Decree shall not foreclose Plaintiffs from seeking performance of all terms and conditions

of this Consent Decree and the RAP, including the Performance Standards.

7. OMC recognizes its obligation under this Consent Decree to ensure achievement of the Performance Standards set forth herein and in the RAP, subject to the Modification provisions in Section XXVII of this Decree. In the event that any Performance Standard is not achieved or will not be achieved in accordance with the provisions of the RAP, OMC agrees to ensure performance of such additional work, including additional design or remedial work, necessary to achieve such Performance Standard. Any additional work determined to be necessary by the Trustee or OMC is subject to approval by U.S. EPA (with the concurrence of IEPA). Any additional work determined to be necessary by U.S. EPA (with the concurrence of IEPA) consistent with the terms of this Decree shall be completed in accordance with the Performance Standards, specifications and schedules approved by U.S. EPA (with the concurrence of IEPA), subject to the Dispute Resolution provisions of this Decree.

8. Except as provided for in subparagraph 7, above, the requirements of this Decree shall not be construed to require OMC to finance, undertake, or ensure any treatment of soils or sediments at the Site other than that specified at the time the Decree is entered in the RAP attached to this Decree unless U.S. EPA demonstrates that the Work specified in the RAP is not protecting human health and the environment and that such additional treatment is necessary to protect human health and the environment.

9. (a) The Trustee shall operate and maintain the containment cells in accordance with the Operation and Maintenance Plan attached hereto as Appendix VII. OMC shall finance and ensure performance of all such requirements in accordance with its commitment under Section IV.B. of this Consent Decree.

(b) The Parties recognize that it is appropriate to review periodically whether continued performance of the requirements in the Operation and Maintenance plan is necessary for the protection of human health and the environment. Accordingly, at any time after five years following commencement of operation and maintenance activities for any containment cell, OMC or the Trustee may request that U.S. EPA (with the concurrence of IEPA) modify or terminate the groundwater extraction, treatment, and discharge activities required by Section 4.0 of the Operation and Maintenance Plan for that containment cell. At any time after twenty (20) years following commencement of operation and maintenance activities, OMC or the Trustee may request that U.S. EPA (with the concurrence of IEPA) modify or terminate other activities required by the Operation and Maintenance Plan (Appendix VII). Any such request will describe the proposed modification or termination and demonstrate that continuation of the activity to be modified or terminated is not necessary to protect human health or the environment. The request may be based on

information such as the following: results of monitoring well or piezometer sampling; results of extraction well sampling; absence of significant changes over time in monitoring parameters; characteristics of the contained materials; containment cell characteristics and performance; frequency of extraction well operation; and the ability of the program element to be resumed if shown to be necessary to protect human health and the environment. Based on the request and any other relevant information, U.S. EPA (with the concurrence of IEPA) shall issue a written determination stating whether any or all operation and maintenance activities may be modified or terminated and the basis for such determination.

(c) At any time, OMC or the Trustee may request that U.S. EPA (with the concurrence of IEPA) temporarily modify or terminate operation and maintenance activities for the purpose of generating data to support a request under subparagraph (b), above. Any such request shall identify the activities covered by the request and state the purpose of and proposed time period for the temporary modification or termination, and describe the data to be generated. If U.S. EPA determines that a temporary modification or termination will not adversely affect human health or the environment, U.S. EPA (with the concurrence of IEPA) will authorize such temporary modification or termination. Any U.S. EPA determination under this subparagraph shall be in writing and shall state the basis for the determination.

(d) Upon a finding by U.S. EPA that resumption of an activity in the Operation and Maintenance Plan which has been modified or terminated pursuant to subparagraph (b) or (c) is necessary to protect human health and the environment, the Trustee or OMC shall resume such activity, subject to the provisions of subparagraph (e), below.

(e) Any determination by U.S. EPA under this subparagraph 9 is subject to the Dispute Resolution provisions of this Decree, and this Court will retain jurisdiction for purposes of resolving any dispute under this subparagraph.

## VI.

### U.S. EPA PERIODIC REVIEW TO ASSURE PROTECTION OF HUMAN HEALTH AND ENVIRONMENT

Pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, U.S. EPA shall review the remedial action at the Facility as defined by Section 101 of CERCLA at least every five (5) years after the entry of this Consent Decree to assure that human health and the environment are being protected by the remedial action being implemented. If, upon such review, U.S. EPA determines that further response action is necessary at the Facility in accordance with Section 121(c), then, subject to Section XVI of this Consent Decree, U.S. EPA and the State reserve the right to take such action as may be authorized under Section 104 and seek

reimbursement under Section 107 or require such action as may be authorized under Section 106. Upon completion of each review pursuant to this Paragraph, U.S. EPA shall notify OMC of its determination. OMC reserves any rights it may have to contest or defend any such action.

## VII.

### QUALITY ASSURANCE

All Work shall be performed using applicable quality assurance, quality control, and chain of custody procedures in accordance with U.S. EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," (QAM-005/80) and subsequent amendments to such guidelines upon notification to the Trustee and OMC of such amendments by U.S. EPA. Prior to the commencement of any monitoring project under this Consent Decree, the Trustee shall submit a Quality Assurance Project Plan (QAPP) to U.S. EPA and the State that is consistent with the RAP and applicable guidelines. Sampling data generated consistent with the QAPP shall be admissible as evidence, without objection, in any proceeding under Section XII of this Decree.

OMC and the Trustee shall use their best efforts to assure that U.S. EPA personnel and authorized representatives and contractors of U.S. EPA are allowed access to any laboratory utilized in implementing this Consent Decree.

## VIII.

### FACILITY ACCESS, SAMPLING, DOCUMENT AVAILABILITY

A. To the extent that the Site or other areas where Work is to be performed hereunder is presently owned by parties other than those bound by this Consent Decree, OMC shall attempt to obtain access agreements from the owners promptly after entry of this Consent Decree for purposes of implementing the requirements of this Consent Decree. Any such agreement shall provide reasonable access to all Parties and their authorized contractors and representatives. If such access agreements are not promptly obtained, OMC shall notify U.S. EPA and IEPA. If, despite OMC's best efforts to obtain access under this provision, OMC is unable to obtain access necessary to carry out the terms of this Consent Decree, U.S. EPA agrees to exercise its authority under Section 104(e) of CERCLA on behalf of OMC. OMC agrees to cooperate with U.S. EPA in this regard. If despite OMC's best efforts access cannot be obtained and the failure to obtain access results in the inability to meet the schedules set forth in the RAP, the Parties agree that such shall constitute a Force Majeure event under Section XI and that an adjustment of the affected schedules will be made pursuant to Section XI.C. Without limitation on the authority of U.S. EPA and IEPA under CERCLA or any other legal authority, OMC shall also provide access to its property within the Site for U.S. EPA, IEPA and authorized representatives and contractors of U.S. EPA and IEPA at all reasonable times for

purposes of overseeing the requirements of this Consent Decree. OMC shall reimburse EPA for its costs incurred to secure access, subject to OMC's right to challenge those costs in accordance with Section XIV.

B. The Parties shall make available to each other the results of all sampling and/or tests or other data generated by them with respect to the implementation of this Consent Decree, and the Trustee shall submit all such data generated by the Trust, and its agents and Contractors, in quarterly progress reports as described in Paragraph IX of this Consent Decree.

C. Upon request, the Parties shall allow split or duplicate samples to be taken of any samples collected in connection with the implementation of this Consent Decree. At least ten (10) days in advance of any sample collection activity, the Party collecting samples shall notify all other Parties of the time of sample collection and the number and type of samples to be collected. In addition, the Parties shall have the right to take any additional samples that the Parties deem necessary.

#### IX.

##### REPORTING REQUIREMENTS

A. Except as otherwise provided by the Remedial Action Plan, the Trustee shall provide to U.S. EPA and IEPA written quarterly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous quarter; (2) include all

results of sampling and tests and all other data received during the course of the Work during the previous quarter; (3) list all plans and procedures completed under the RAP during the previous quarter; (4) describe all actions, data and plans which are scheduled for the next quarter and provide other information relating to the progress of construction as is customary in the industry; and (5) include information regarding matters which may affect the future schedule for implementation of the RAP. These progress reports are to be submitted to U.S. EPA and IEPA by the tenth day of every calendar quarter following the quarter in which this Decree is entered.

B. If the date for submission of any item or notification required by this Consent Decree falls upon a weekend or state or federal holiday, the time period for submission of that item or notification is extended to the next working day following the weekend or holiday.

C. The Parties agree that the following releases are reasonably expected from the activities covered by the Remedial Action Plan or work plans or documents submitted pursuant to the RAP, and therefore shall be deemed to have been reported under Section 103 of CERCLA where required to be reported, as long as the activities noted below are being performed in accordance with the RAP:

1. releases reasonably expected as a result of the resuspension of sediments through dredging and construction activities in the Harbor;

2. releases reasonably expected as a result of operation of the dredging apparatus, the dredge water treatment facilities, and associated conveyance systems;

3. releases reasonably expected as a result of operation of the approved soil and sediment treatment system;

4. releases reasonably expected as a result of the excavation of the North Ditch;

5. releases reasonably expected from the sediments during required sampling activities; and

6. releases reasonably expected from operation of the water treatment systems.

OMC agrees to notify the Remedial Project Manager ("RPM") by telephone of any other releases required to be reported under Section 103 of CERCLA and to confirm such notification in writing to the RPM.

X.

REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS

A. Within 20 days of entry of this Consent Decree, U.S. EPA shall designate a Remedial Project Manager (RPM) and IEPA shall designate a Project Coordinator for the Site, and each Plaintiff shall designate an alternate representative. In addition, U.S. EPA and IEPA may designate other employees, and

federal and state contractors and consultants to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. The Trustee and OMC each shall designate a Project Coordinator, and an Alternate Project Coordinator to act in the Project Coordinator's absence, who shall have primary responsibility on behalf of the Trustee and OMC, respectively, for ensuring that the Work is implemented and for communications with the RPM and State Project Coordinator. The RPM shall have the authority lawfully vested in an RPM by the National Contingency Plan, 40 C.F.R. Part 300. The RPM does not have the authority to modify in any way the terms of this Decree, the RAP, or any design or construction plans or schedules submitted thereunder.

B. To the maximum extent possible, except as specifically provided in the Consent Decree, communications between OMC, the Trustee, IEPA and U.S. EPA concerning implementation of this Consent Decree shall be made between the Project Coordinators and the RPM.

C. Within twenty (20) calendar days of the effective date of this Consent Decree, the Trustee, OMC, IEPA and U.S. EPA shall notify each other, in writing, of the name, address and telephone number of that party's designated Project Coordinator and an Alternate Project Coordinator or the RPM and an Alternate RPM.

D. Without affecting the authority of the RPM in Section X.A. above, in the event U.S. EPA finds that conditions

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at the Site may present an imminent and substantial endangerment to public health or the environment, it may require suspension of the Work, in which case the RPM shall promptly confer with the Project Coordinators to determine how to perform the Work in a manner that is consistent with this Consent Decree and the RAP and that protects human health and the environment. If there is any issue which cannot be resolved between the RPM and the Project Coordinators, the matter shall be resolved in accordance with the Dispute Resolution provisions of Section XII. If the Work is suspended, and the suspension is not due to an unexcused failure to comply with the RAP, the schedule for the Work shall be extended by the duration of the suspension or, subject to the approval of the Court, for such longer period as is needed to perform the Work in light of the circumstances presented by the suspension.

## XI.

### FORCE MAJEURE

A. "Force Majeure" for purposes of this Consent Decree is defined as any event arising from causes beyond the control of both OMC and the Trustee which delays or prevents the performance of any obligation under this Consent Decree. "Force Majeure" shall not include nonattainment of the Performance Standards set forth in Paragraph J of Section III, although the Parties agree that delay in attaining Performance Standards may result from a Force Majeure event. An increase in costs alone is not itself a Force Majeure event.

B. When circumstances occur which will delay the completion of any phase of the Work or delay access to the Site or to any property on which any part of the Work is to be performed as a result of a "force majeure" event, OMC shall promptly notify the RPM by telephone, or in the event of the RPM's unavailability, the Director of the Waste Management Division of U.S. EPA. Within thirty (30) days of the event which OMC contends is responsible for the delay, OMC shall supply to U.S. EPA and IEPA in writing the reason(s) for and anticipated duration of such delay, the measures taken and to be taken to prevent or minimize the delay, and the timetable for implementation of such measures. Failure to give oral notice to the RPM and to give written explanation to U.S. EPA in a timely manner shall constitute a waiver of any claim of force majeure.

C. If U.S. EPA agrees that a delay is or was attributable to a "force majeure" event, the Parties shall promptly modify the RAP to provide such additional time as may be necessary to allow the completion of the specific phase of Work and/or any succeeding phase of the Work affected by such delay.

D. If the Parties cannot agree whether the reason for the delay was a "force majeure" event, whether the duration of the delay is or was warranted under the circumstances or whether the additional time provided is sufficient to compensate for the delay, U.S. EPA shall promptly notify OMC in writing and give the reasons for the determinations, and the Parties shall resolve the dispute according to Section XII. OMC shall have

the burden of proving force majeure as a defense to compliance with this Consent Decree.

E. 1. In addition to any other schedule extensions for meeting treatment requirements granted pursuant to this Section, if the Treatment Contractor is unable to carry out the terms of the RAP and such failure is due to financial reasons of the Treatment Contractor, and the Trustee has made all payments it is obligated to make under its contract with the Treatment Contractor, and OMC has made all payments it is obligated to make under this Decree, the schedule for completion of those portions of the RAP to be undertaken by the Treatment Contractor and all succeeding portions of the RAP dependent on performance by the Treatment Contractor shall be revised according to this paragraph provided that:

(a) OMC notifies U.S. EPA and IEPA promptly after it receives notice from the Treatment Contractor or other information that would cause it to believe that the Treatment Contractor will be unable to perform; and

(b) All necessary measures are taken to secure and isolate all soils and sediments that have been removed from the Treatment Areas to prevent release of hazardous substances into the environment.

2. Within sixty (60) days after OMC notifies U.S. EPA and IEPA pursuant to subparagraph 1 above, OMC shall submit a description of each alternative Treatment Contractor and treatment technology under consideration for completion of

treatment (including best estimates of time frames required for completion of treatment by such Contractor and technology). U.S. EPA shall notify OMC in writing of any disapproval of any alternate Treatment Contractor or treatment technology within thirty (30) days of receipt of said document, and shall set forth the reasons for such disapproval. Within 180 days after OMC notifies U.S. EPA pursuant to subparagraph 1, above, OMC shall submit a final proposal and work plan for an alternative Treatment Contractor or treatment technology and a revised schedule for implementation of treatment in accordance with the Performance Standards in the RAP. The proposed revised schedule shall provide for implementation of treatment as expeditiously as practicable. Notwithstanding any modification to the RAP under this paragraph, the soils and sediments removed from the Treatment Areas shall be treated to the Performance Standard in the RAP. Provided that treatment of the soils and sediments from the Treatment Areas achieves the Performance Standard set forth in the RAP, OMC may propose an alternate method of achieving said Performance Standard. Any such proposal shall be subject to review and approval by U.S. EPA (with the concurrence of IEPA). Any dispute under this paragraph shall be subject to the Dispute Resolution provisions of Section XII.

F. The provisions of this Section shall govern delays in obtaining permits required for the Work, if any, and delays in approvals from IEPA and U.S. EPA for reasons not attributable to OMC.

## XII.

### DISPUTE RESOLUTION

A. Informal Discussions. Whether or not a provision of this Consent Decree refers to dispute resolution, the parties to this Decree shall attempt expeditiously to resolve any disagreements that arise under this Decree through informal discussions.

B. Motion for Dispute Resolution.

1. In the event that any dispute arising under this Consent Decree is not resolved expeditiously through informal means, any party desiring dispute resolution under this Section, or the Trustee, may serve and file a Motion for Dispute Resolution with the Court. In the case of an objection to a decision or determination by U.S. EPA or IEPA, such motion shall be served and filed within sixty (60) days of receipt of the decision or determination complained of or, in the case of a withholding of approval or certification, within one hundred twenty (120) days of the request for approval or certification of such lesser time as may be required to prevent a delay or interruption in actions required under this Decree. Any response to the motion shall be at a time agreed to by the Parties or set by the Court.

2. Any party seeking dispute resolution pursuant to subparagraph 1 shall include in its Motion a written statement of the issues in dispute, a recitation of the relevant facts and evidence upon which the dispute is based, a statement of

position regarding the relevant scope and standard of review, and as appropriate, a list of witnesses or a citation to the documentation in the administrative record compiled pursuant to paragraph C below upon which such party relies.

C. Administrative Record.

1. Maintenance. U.S. EPA shall maintain an administrative record of each decision or determination by U.S. EPA provided for in this Consent Decree and the RAP. All Parties shall be provided an adequate opportunity to submit for inclusion in the administrative record all information that they wish to have considered by the U.S. EPA decision-maker, prior to the time of decision. U.S. EPA shall include in the record a statement and explanation of the decision or determination, and copies of all documents considered by the decision-maker. The record shall be available for review and copying by all parties upon reasonable notice.

2. Certification. Where appropriate, the custodian of the record maintained pursuant to subparagraph 1 shall certify and submit the administrative record to the Court upon the filing of a Motion for Dispute Resolution by U.S. EPA or, in the case of a motion challenging U.S. EPA's decision, upon the filing of the agency's response to the Motion for Dispute Resolution.

D. Judicial Review

1. U.S. EPA Determinations Respecting Selection or Adequacy of Remedial Action. Any decision or determination by U.S. EPA pertaining to the selection or adequacy of response action(s) taken under this Consent Decree will be reviewed by the Court on the basis of the administrative record, and U.S. EPA's decision will be upheld by the Court unless it is arbitrary and capricious or otherwise not in accordance with law. Requests to supplement the record shall be resolved in accordance with existing principles of administrative law.

2. Other Issues. Except as specified in paragraph D.1 above or otherwise in this Decree, this Consent Decree does not establish burdens of proof or the scope or standard of judicial review of disputes between the parties.

3. Notwithstanding the provisions of paragraph D.1 above, if Congress or a court of controlling jurisdiction establishes or provides for a different procedure or scope or standard of review with respect to U.S. EPA decision-making pertaining to the selection or adequacy of response actions, any Party may move the Court to modify paragraph D.1 to conform to such procedure or scope or standard of review.

XIII.

RETENTION AND AVAILABILITY OF INFORMATION

A. OMC shall make available to U.S. EPA and IEPA (where non-privileged documents are concerned), and shall retain until

U.S. EPA issues a Certificate of Completion pursuant to Section XXIV, all records and documents in its possession, custody, or control which relate to the performance of the Work pursuant to this Consent Decree, including, but not limited to, documents reflecting the results of any sampling, tests, or other data or information generated or acquired by it or on its behalf. Following U.S. EPA's issuance of a Certificate of Completion, OMC shall notify U.S. DOJ, U.S. EPA and IEPA at least ninety (90) calendar days prior to the destruction of any original documents, and upon request by U.S. EPA or IEPA, OMC shall relinquish custody of any nonprivileged documents to U.S. EPA or IEPA.

B. U.S. DOJ, U.S. EPA, and the State agree to use their best efforts to retain records and documents in their possession, custody or control which relate to the performance of the Work pursuant to this Consent Decree, including, but not limited to, documents reflecting the results of any sampling, tests, or other data or information generated or acquired by time or on their behalf. Upon request, U.S. DOJ, U.S. EPA, and the State agree to provide to OMC or the Trustee such documents as are releaseable under the Freedom of Information Act. U.S. EPA further agrees to retain all documents placed in an administrative record compiled by it in connection with the Waukegan Harbor Site until the Work provided for in this Decree has been completed.

C. OMC, or the Trustee on behalf of OMC, may assert business confidentiality claims covering part or all of the information provided in connection with this Consent Decree in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7), and pursuant to 40 C.F.R. §2.203(b) and applicable State law, except as provided in D below.

D. Information determined to be confidential by U.S. EPA will be afforded the protection specified in Section 104(e)(7) of CERCLA and 40 C.F.R. Part 2, Subpart B and, if determined to be entitled to confidential treatment under State law by IEPA, afforded protection under State law by IEPA. If no such claim accompanies the information when it is submitted to the U.S. EPA and the State, the public may be given access to such information without further notice to the Trustee or OMC. U.S. EPA and the State shall provide OMC and the Trustee with any notice required by law of any information determined not to be confidential.

E. Information acquired or generated by OMC or the Trustee in performance of the Work that is subject to the provisions of Section 104(e)(7)(F) of CERCLA, 42 U.S.C. §9604(e)(7)(F), shall not be claimed as confidential by OMC.

#### XIV.

##### REIMBURSEMENT

A. The Trustee shall reimburse U.S. EPA and the State for their costs of oversight and implementation of this Decree,

subject to OMC's right to contest the appropriateness of such costs as specified in Paragraph B of this Section. On or after October 1 of each year following the effective date of the Decree, but no later than April 1 of the following year, the United States and the State shall send the Trustee, if needed, a demand for payment of costs incurred during the previous fiscal year by the United States and the State after the entry of this Consent Decree in connection with the oversight and implementation of this Decree. Each such demand shall be accompanied by an itemized cost statement and all supporting documentation. Except as otherwise provided in this Section, within 90 days of receipt of the demand for payment, the Trustee shall make payment to the United States by sending a check, payable to the "Hazardous Substances Superfund," to the following address:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 371003M  
Pittsburg, PA 15251  
Attention: Superfund Collection Officer

Within the same period, the Trustee shall make payment to the State by sending a check, payable to "Treasurer, State of Illinois for deposit in the Hazardous Waste Fund," to the following address:

Illinois Environmental Protection Agency  
Division of Administration  
Fiscal Services Section  
2200 Churchill Road  
Springfield, IL 62794-9276

Each check shall note the site name and the civil action number.

B. OMC reserves the right to contest through the dispute resolution process of Section XII the costs or charges in the demand. The Trustee shall not pay amounts specifically subject to dispute resolution during the period of dispute, but shall pay any undisputed amounts within the time provided in Paragraph A above. The Trustee shall pay the disputed amounts in accordance with the resolution of the dispute by the Parties or the District Court. For the period after a demand for reimbursement or a portion thereof becomes due and payable under this Paragraph or Paragraph A, interest shall accrue on the amount overdue at the same rate established for overdue stipulated penalties under Section XV of this Decree. On a quarterly basis, U.S. EPA shall provide OMC with a computer-generated report, currently known as the SPUR report, listing costs attributed to the Site. The State will likewise provide similar information at similar times.

C. Neither the Trust nor OMC is liable for any costs incurred by the State in connection with any independent contractor used to oversee implementation of this Decree, unless such contractor is used in lieu of a State employee for such oversight and the costs for which OMC is liable do not exceed the allocable costs and out-of-pocket expenses of the State employee who would otherwise be performing such oversight.

XV.

STIPULATED PENALTIES

A. OMC shall pay stipulated penalties to the United States and the State of Illinois for each of the following violations of the Consent Decree unless the violation is excused pursuant to Section XI, waived by the United States or the State, or reduced or forgiven by the Court under Paragraphs F and I of this Section.

1. For each day that submission of a plan or report (other than the plans specified in subparagraph 2 of this Paragraph and the notifications specified in Paragraph C of Section IX of this Decree) in accordance with the requirements of this Decree or the RAP is delayed, OMC shall pay the following:

|               |       |
|---------------|-------|
| Days 1 to 7   | \$100 |
| Days 8 to 30  | \$250 |
| After 30 days | \$500 |

2. For each day that the following work is delayed, OMC shall pay the sum of \$250 for the first seven days, \$1,000 for the 8th through the 30th day, \$2,500 for the 31st through the 60th days, and \$5,000 for each day after the 60th day:

Submission of the design report for the design and construction of the three containment cells.

Completion of the new slip.

Completion of the containment cell for Slip No. 3 (except for the temporary cover and final cap).

Commencement of treatment of the sediments and soils removed from the designated Treatment Areas.

Completion of the cap on the East Containment Cell in the North Property area.

Completion of the cap on the West Containment Cell in the North Property area.

OMC or the Trustee shall promptly provide EPA with written notice of completion of: (1) the new slip; (2) the Slip No. 3 containment cell (except for the temporary cover and final cap); (3) North Ditch excavation; and (4) treatment of sediments and soils.

B. All penalties begin to accrue on the day following the day on which complete performance is due or a violation occurs, and continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree. OMC's total penalty exposure for violations of this Decree shall be limited to \$25,000 per day.

C. Following U.S. EPA's determination that OMC or the Trustee has failed to comply with the requirements of this Consent Decree, the United States shall give OMC written notification of the same and describe the noncompliance. This notice shall also indicate the amount of penalties due, if any.

D. All penalties owed to the United States or to the State under this Section shall be payable within 90 days of receipt of the notification of noncompliance, unless OMC invokes the dispute resolution procedures under Section XII. Penalties shall accrue from the date of violation regardless of whether the United States has notified OMC of a violation.

One-half of such penalties shall be paid to U.S. EPA by certified check to the "Hazardous Substances Superfund" and one-half shall be paid to the State by certified check to "Treasurer, State of Illinois for deposit in the Hazardous Waste Fund." All checks to U.S. EPA and the State shall be mailed as provided in Section XIV.

E. Neither the filing of a motion to resolve a dispute nor the payment of penalties shall alter in any way OMC's obligation to ensure the completion of the performance required hereunder.

F. OMC may dispute Plaintiffs' right to the stated amount of penalties by involving the dispute resolution procedures under Section XII. Penalties shall accrue but need not be paid during the dispute resolution period; however, OMC will pay any undisputed amount within the time provided in Paragraph D above. If the District Court becomes involved in the resolution of the dispute, the period of dispute shall end upon the rendering of a decision by the District Court regardless of whether any party appeals such decision. If OMC prevails upon resolution, no penalties are payable. If OMC prevails only in part, penalties shall be payable in accordance with the Court's determination. If OMC does not prevail upon resolution, Plaintiffs have the right to collect all penalties which accrue prior to and during the period of dispute. OMC shall, however, have the right to petition the Court for a finding that OMC's position regarding the dispute had substantial support in law,

fact, or expert opinion (as applicable) and that OMC sought dispute resolution at the earliest practicable time and took all other appropriate steps to avoid any delay in the Work that is not the subject of the dispute. If the Court so finds, the Court may forgive all stipulated penalties that accrue during the dispute resolution period. In the event of an appeal, all accrued penalties shall be placed into an interest-bearing escrow account which shall be distributed when a decision has been rendered by the final court of appeal.

G. Pursuant to 31 U.S.C. §3717, interest shall accrue on any stipulated penalty amounts overdue at a rate established by the Department of Treasury for any period after the penalties become due and payable under Paragraph D or F above.

H. If OMC fails to pay stipulated penalties in accordance with this Section, Plaintiffs may institute proceedings to collect the penalties. Notwithstanding any other provisions of this Consent Decree, U.S. EPA may elect to assess or seek civil penalties pursuant to Section 109 of CERCLA or bring an action in U.S. District Court to enforce the provisions of this Consent Decree, but the United States agrees not to seek both stipulated penalties and §109 civil penalties for the same violation. Payment of stipulated penalties shall not preclude U.S. EPA or the State from electing to pursue any other remedy or sanction to enforce this Consent Decree.

I. In the event stipulated penalties become due pursuant to Paragraph A.1, OMC may delay payment of fifty percent (50%)

of the penalties due until the date for completion of the Work set forth in the RAP. At that time, the remaining fifty percent (50%) of the stipulated penalties shall be forgiven if OMC has met the schedule date for completion of the Work set forth in the RAP, as adjusted by any modifications pursuant to this Decree.

XVI.

COVENANT NOT TO SUE

A. OMC waives any right or any defense based on the Covenants Not To Sue executed by the United States and State in Civil Action No. 78 C 1004, annexed as Appendix VIII, only for the purposes of (1) entry of this decree, (2) enforcement of the obligations set forth in this Decree, and (3) any action taken or ordered pursuant to Section 121(c) of CERCLA.

B. In consideration of obligations which will be undertaken and payments which will be made by OMC under the terms of the Consent Decree, and except as otherwise specifically provided in this Section, the United States and the State covenant not to take civil judicial or administrative action against OMC for Covered Matters. Covered Matters shall include any and all claims available to Plaintiffs arising from the facts, transactions, or occurrences described in Plaintiffs' complaint against OMC, including but not limited to such claims as could be raised under Sections 106 and 107 of CERCLA (including but not limited to claims for damages under

Sections 107(a)(4)(C) and 107(f) of CERCLA for injuries to sediments and submerged lands and other natural resources), Section 7003 of RCRA, or other statutory or common law. With respect to future liability, this covenant not to sue shall take effect upon certification by U.S. EPA of the completion of the Work concerning the Facility in accordance with the requirements of Section XXIV. This Consent Decree shall be without prejudice to claims excluded from covered matters and claims expressly reserved in this Decree.

C. "Covered Matters" does not include:

(1) Liability arising from waste materials removed from the Site;

(2) Liability for damages for injuries to natural resources under Federal and State trusteeship caused by releases at and from the Site prior to commencement of the dredging and excavation required under Section 4.0 of the Work Plan; provided, however, that this exclusion does not include claims for damages for injuries to sediments and submerged lands;

(3) Liability for violations of federal or state law which occur during implementation of the remedial action;

(4) Liability for indemnification claims pursuant to Section XVII; and

(5) Costs incurred pursuant to Section 104(i) of CERCLA as amended by SARA.

Nothing in Paragraph C(2) of this Section shall be construed to limit the scope of the prior Covenants Not to Sue in Appendix VIII with respect to any claim for damages to natural resources. Notwithstanding any other provision in this Consent Decree, the United States and the State reserve the right to institute new proceedings to seek damages for injuries to natural resources in the event that failure of the containment cells results in releases causing injuries to natural resources.

D. Notwithstanding any other provision in this Consent Decree, the United States reserves the right to institute proceedings in this action or in a new judicial action seeking to compel OMC to perform additional response work at the Facility under Section 106 of CERCLA, Section 7003 of RCRA, or other applicable law, and the United States and the State reserve the right to institute proceedings in a new action seeking to reimburse the United States for its response costs and to reimburse the State for its matching share of any response action undertaken under CERCLA relating to the Facility, if the conditions of subparagraphs D.1 or D.2 are met.

1. For proceedings prior to U.S. EPA's certification of completion of the remedial action concerning the Facility,

(a) conditions at the Facility, previously unknown to the United States and the State, are discovered after the entry of this Consent Decree, or

(b) information is received after the entry of this Consent Decree,

and these previously unknown conditions of this previously unknown information indicates that the remedial action is not protective of human health and the environment.

2. For the proceedings subsequent to U.S. EPA's certification of completion of the remedial action concerning the Facility,

(a) conditions at the Facility, previously unknown to the United States and the State, are discovered after the certification of completion by U.S. EPA, or,

(b) information is received after the certification of completion by U.S. EPA,

and these previously unknown conditions or this previously unknown information indicates that the remedial action is not protective of human health and the environment.

E. Notwithstanding any other provision in this Consent Decree, the covenant not to sue in this Section shall not relieve OMC of its obligations to ensure compliance with the requirements of this Consent Decree, and the United States and the State reserve their rights in the event of a breach of the terms of this Consent Decree or impossibility of performance of the Work required under this Consent Decree: (1) to take response actions at the Site, and (2) to seek recovery of costs relating to any portion of the Work funded or performed by the United States or the State as a result of such breach or impossibility of performance, or incurred by the United States or the State as a result of having to seek judicial assistance to remedy conditions at or adjacent to the Site resulting from such breach or impossibility of performance.

F. Nothing in this Consent Decree shall constitute or be construed as a release or covenant not to sue of any federal claim or cause of action against any person, firm, trust, joint venture, partnership, corporation, or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the Site.

G. This Consent Decree shall constitute and be construed as a release by the State of Illinois of all state law claims or causes of action against OMC and any other person, firm, trust, joint venture, partnership, corporation, and other entity, both known and unknown, including but not limited to Monsanto Company, for Covered Matters under this Decree.

H. The Parties agree that this Decree is fully dispositive of any duties and liabilities that OMC may have with respect to any other person against whom the United States, the State, or OMC may bring an action for matters covered by this Decree. Nothing in this Decree shall extinguish any claims OMC may have under state or federal law against any person or entity, including but not limited to Monsanto Company.

I. Notwithstanding any other provision of this Decree, the provisions of this Section XVI shall survive the termination of the Decree.

XVII.

OTHER CLAIMS

A. OMC agrees to indemnify, save and hold harmless U.S. EPA, the State and their representatives from any and all claims or causes of action caused solely by the acts or omissions of OMC, the Trustee, or the Contractor, and/or its representatives in carrying out any activities pursuant to this Consent Decree. U.S. EPA and the State shall give notification promptly to OMC of any such claims or actions upon receiving notice that such claim or action is anticipated or has been filed, and OMC may join in the defense of all claims or causes of action within the scope of this indemnification. U.S. EPA and the State agree not to act with respect to any such claim or action without first providing OMC an opportunity to participate. If OMC joins in the defense of a claim or cause of action within the scope of this indemnification, U.S. EPA and the State agree to cooperate with OMC.

B. U.S. EPA and the State are not to be construed as parties to, and do not assume any liability for, any contract entered into by the Trustee or OMC in carrying out the activities pursuant to this Consent Decree.

C. OMC waives its rights to assert any claims against the Hazardous Substances Superfund under CERCLA that are related to any past costs or costs incurred in the Work performed pursuant to this Consent Decree and the RAP, and nothing in this Consent Decree shall be construed as U.S. EPA's preauthorization of a claim against the Hazardous Substances Superfund.

D. Only for purposes of clause (ii) of Section 104(c)(3) of CERCLA (50% State Share Clause), 42 U.S.C. §9604(c)(3), OMC acknowledges that the term "facility" does not include navigable waters or the beds underlying these waters.

#### XVIII.

##### FINANCIAL ASSURANCE FOR FUTURE MAINTENANCE

A. To assure that OMC will be able to make payments to the Trust sufficient to fund operation, monitoring, and maintenance activities for the requisite period, OMC shall submit to IEPA a demonstration that OMC passes the financial test for post-closure care in a manner consistent with the standards of 35 Ill. Adm. Code §724.245(f)(1). For purposes of this demonstration, the phrase "current closure and post-closure cost estimates" in 35 Ill. Adm. Code §724.245(f)(1) means the cost of operation, monitoring, and maintenance of the action set forth in the RAP as calculated consistent with 35 Ill. Adm. Code §724.244.

B. The demonstration shall include the items set forth in 35 Ill. Adm. Code §724.245(f)(3).

C. OMC shall initially submit the demonstration to IEPA within ninety (90) days of when OMC submits a Notice of Completion and final report pursuant to Section XXIV of this Decree, and OMC shall send updated information to IEPA within ninety (90) days after the close of each succeeding fiscal year. OMC may include these submissions in any other

submissions it may make to IEPA under 35 Ill. Adm. Code §§724.243 or 724.245.

D. IEPA may, based on a reasonable belief that OMC may no longer meet the requirements of 35 Ill. Adm. Code §724.245(f)(1), require reports of financial condition at any time in addition to those specified in Paragraph C above. If IEPA finds, on the basis of such reports or other information, that OMC no longer meets the requirements of §724.245(f)(1), OMC shall provide alternative financial assurance through a trust fund, surety bond guaranteeing performance, or letter of credit that is consistent with the standards set forth in 35 Ill. Adm. Code §724.245, within 30 days after notification of such a finding.

E. IEPA may disallow use of the financial test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of OMC's financial statements (see §724.245(f)(3)(B)). An adverse opinion or a disclaimer of opinion will be cause for disallowance. IEPA shall evaluate other qualifications on an individual basis. OMC shall provide alternative financial assurance within thirty (30) days after notification of the disallowance.

F. During the period of operation, monitoring, and maintenance, IEPA shall approve a decrease in the cost estimate for which this test demonstrates financial assurance if OMC demonstrates that the amount of the cost estimate exceeds the remaining cost of operation, monitoring, and maintenance.

XIX.

NOTICES

Whenever, under the terms of this Consent Decree, notice is required to be given, a report or other document is required to be forwarded by one Party to another, or service of any papers or process is necessitated by the dispute resolution provisions of Paragraph XII hereof, such correspondence shall be directed to the following individuals at the addresses specified below. Whenever under the provisions of this Consent Decree and the attachments hereto notice is to be given to the IEPA, copies of such notice shall also be provided to the Illinois Attorney General at the address specified below:

As to the United States or  
U.S. EPA:

- a. Regional Counsel  
Attn: Waukegan Harbor Site  
Coordinator (5CS)  
U.S. Environmental  
Protection Agency  
230 S. Dearborn Street  
Chicago, Illinois 60604
- b. Director, Waste Management  
Attn: Waukegan Harbor Site  
On Scene Coordinator/Remedial  
Project Manager (5HE)  
U.S. Environmental Protection  
Agency  
230 S. Dearborn Street  
Chicago, Illinois 60604
- c. Assistant Attorney General  
Land & Natural Resources Division  
U.S. Department of Justice  
10th & Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

As to the State of Illinois or  
IEPA:

- a. Chief, Environmental  
Control Division  
Illinois Attorney General's  
Office  
100 West Randolph Street  
Chicago, Illinois 60604
- b. Illinois Environmental  
Protection Agency  
Attn: Manager, Remedial  
Project  
Management Section  
Division of Land Pollution  
Control  
2200 Churchill Road  
Springfield, Illinois  
62794-9276

As to OMC:

Director of Environmental Control  
OMC  
100 Sea-Horse Drive  
Waukegan, Illinois 60085

XX.  
CONSISTENCY WITH  
NATIONAL CONTINGENCY PLAN

The Court finds and the parties agree that the Work, if performed pursuant to the terms of this Decree, and all costs incurred in implementing the Work, comply with CERCLA and are consistent with the provisions of the National Contingency Plan, and all actions taken pursuant to, and in accordance with, this Consent Decree shall be afforded all protections contained in CERCLA as it may be amended from time to time.

XXI.  
RESPONSE AUTHORITY

Nothing in this Consent Decree shall be deemed to limit the response authority of the United States under 42 U.S.C. §9604 or of the IEPA under §§4 and 22.2 of the Illinois Environmental Protection Act. This Section is intended solely as a specific reservation of the response authority of the United States and the State and shall not affect the covenant not to sue herein.

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XXII.

PUBLIC PARTICIPATION

A. The United States shall publish a notice of this Consent Decree's availability for review and comment upon its lodging with the United States District Court as a proposed settlement in this matter.

B. The United States will provide persons who are not parties to the proposed settlement with the opportunity to file written comments during a thirty (30) day period following such notice. In addition, the United States intends to hold an informal public meeting in Waukegan, Illinois during this period to receive either written or oral comments. The United States will file with the Court a copy of any comments received and the responses of the United States to such comments.

C. After the closing of the public comment period, the United States will review such comments and determine whether the comments disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper or inadequate, and that the Consent Decree should therefore be withdrawn. Should the Consent Decree be withdrawn, the United States shall inform the other parties as to the basis for the withdrawal and any modification necessary to consent to a settlement.

XXIII.

COMMUNITY RELATIONS

OMC shall cooperate with U.S. EPA and IEPA in providing Consent Decree information to the public regarding design and implementation required by this Consent Decree. OMC shall, upon reasonable request by U.S. EPA or IEPA, participate in the preparation of appropriate information disseminated to the public and in public meetings which may be held or sponsored by U.S. EPA or IEPA to explain activities at or concerning the Site.

XXIV.

EFFECTIVE AND TERMINATION DATES

A. This Consent Decree shall be effective upon the date of its entry by the Court.

B. Upon completion of five years of operation and maintenance activities in accordance with the Operation and Maintenance Plan attached hereto as Appendix VII, or one year after the final cap is placed on the final containment cell, whichever is later, OMC shall submit to U.S. EPA and IEPA a Notice of Completion and a final report as required by the RAP. The final report must summarize the Work performed, any significant modification to the RAP, and the Performance Standards achieved. The summary shall include or reference any supporting documentation.

C. Upon receipt of the Notice of Completion and final report, U.S. EPA and IEPA shall review the accompanying report and any other supporting documentation. Prior to the issuance of a Certificate of Completion, U.S. EPA and IEPA shall also undertake a review of the Work performed under Section V of this Consent Decree up to the date that the Notice of Completion is submitted. U.S. EPA (with the concurrence of IEPA) shall issue a Certificate of Completion upon its determination that (1) up to the date that the Notice of Completion was submitted, the Work has been performed in accordance with the RAP and the Performance Standards required under this Consent Decree have been achieved, and (2) all costs and stipulated penalties required to be paid under Sections XIV and XV have been paid in full by OMC. U.S. EPA shall not unreasonably delay issuance of the Certificate of Completion.

D. Upon filing of U.S. EPA's Certificate of Completion, this Consent Decree shall be terminated upon motion of either party. However, OMC's obligations to ensure performance of remaining operation, monitoring and maintenance requirements in accordance with Section V.D.9 and to permit access for purposes of overseeing the performance of such activities, shall survive the termination of the Decree, and shall be enforceable by the United States or the State by reinstitution of this action or by institution of a new judicial action. The provisions of Sections VI, XIII, XVI, and XVIII shall also survive the termination of the Decree.

XXV.

USE OF CONSENT DECREE

This Consent Decree was negotiated and executed by the Parties in good faith to avoid further litigation with respect to matters resolved herein, and is a settlement of disputed claims. The execution of this Decree is not and shall not be an admission of any fact or liability on any issue.

XXVI.

RETENTION OF JURISDICTION

The Court shall retain jurisdiction of the subject matter and Parties to this action for the purposes of enforcing, interpreting, or modifying the terms of the Consent Decree.

XXVII.


MODIFICATION

All modifications to the Decree or the RAP must be in writing and, except as this Section provides, must be approved by

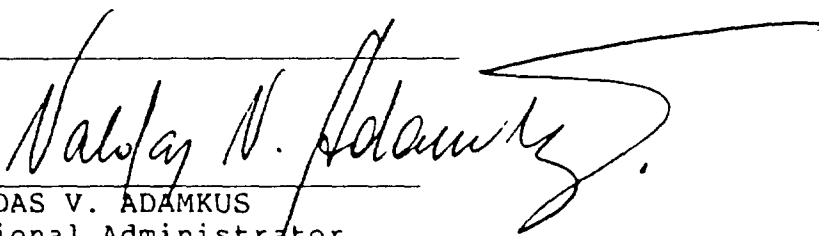
the Court. Modification of the RAP may be effected either by written agreement of the Parties filed with the Court or by order of the Court. No oral modification of the Decree or the RAP shall be effective.

By the signatures below each party name, Consent to this Decree is hereby given:

UNITED STATES OF AMERICA

By:   
ROGER J. MARZULLA  
Assistant Attorney General  
Land & Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

Date: \_\_\_\_\_

By:   
VALDAS V. ADAMKUS  
Regional Administrator  
U.S. EPA Region V

Date: Aug. 30<sup>th</sup>, 1988

STATE OF ILLINOIS

By: Bernard P. Killian  
Bernard P. Killian  
Director  
Illinois Environmental  
Protection Agency

Date: 9/19/88

NEIL F. HARTIGAN  
Attorney General  
State of Illinois

By: Michelle D. Jordan  
MICHELLE D. JORDAN, Chief  
Environmental Control Division  
100 West Randolph Street, 12th Flr.  
Chicago, IL 60601

Date: 10-7-88

OUTBOARD MARINE CORPORATION

By: Charles D. Strang  
Charles D. Strang  
Chairman, Board of Directors

Date: August 25, 1988

IT IS SO ORDERED

\_\_\_\_\_  
Date Entered

\_\_\_\_\_  
United States District Judge

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